IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7254 of 2005
With
SPECIAL CIVIL APPLICATION No. 7255 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAILESH RAVJIBHAI AMIN - Petitioner(s)
Versus
APNI SAHAKARI BANK LTD - Respondent(s)

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Appearance :
MR BHARAT JANI for Petitioner(s) : 1,
MR GM JOSHI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 30/08/2006

ORAL JUDGMENT

1. Rule. Learned advocate Shri G.M. Joshi waives service of notice of rule on behalf of the

respondent. At the joint request of learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. The petitioners in these petitions have challenged an order dated 24-3-2005 in so far as the same is adverse to the petitioners.

3. The petitioners along with some other persons were facing a decree passed by the Board of Nominees. The petitioners had therefore, preferred appeals being Appeal Nos. 191/2001 and 192/2001. On 13-4-2004, the appeals were fixed for final hearing. On that date however, learned advocate for the appellants was not available as he had gone out of station. An application on his behalf therefore, came to be filed seeking adjournment in the appeals. The Tribunal has however, rejected the application for adjournment and proceeded to dispose of the appeals ex-parte. The petitioners therefore, preferred an application for setting aside the said order dated 17-5-2004. The applications

filed by the petitioners were allowed by the Tribunal by an order dated 24-3-2005. The appeals were restored to file however, on the condition that the petitioners deposit 25% of the suit amounts within two months. It is this condition that the petitioners have challenged in these petitions.

4. Having heard learned advocate Shri Jani for the petitioners and Shri Joshi for the respondent-Bank, I find that the condition imposed cannot be sustained. The Tribunal had found sufficient reasons to restore the appeals. In that view of the matter without final disposal of the appeal, condition for depositing 25% of the suit amount ought not to have imposed. Learned advocate for the petitioners had moved an application for adjournment on his personal ground. Unless it was found that the application is frivolous or that the appellants were repeatedly seeking adjournments, ordinarily at-least for a short time, the appeal could have been adjourned by the Tribunal.

5. Considering all these aspects of the matter, condition of depositing 25% of the suit amount for seeking restoration of appeals is set aside. To the above extent, order dated 24-3-2005 shall stand modified.

6. The petitions are disposed of accordingly. Rule made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(raghu)